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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 621 MISC.

ROBERTO ROBLES, by his g. a. l., PABLO ROBLES,

Petitioner,

against

MARION B. FOLSOM, Federal Security Administrator,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EMANUEL REDFIELD,
60 Wall Street,
New York, New York

GORDON L. POTTER,
56 Park Avenue,
New York, New York

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Roberto Robles, by his g. a. l., Pablo Robles, prays, by his attorneys Emanuel Redfield and Gordon L. Potter, that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit.

The petitioner, upon the death of petitioner's father, sought the benefits under the Social Security Act provided for a child of a deceased wage-earner. Benefits were denied on the grounds that the child was not a "child" in the meaning of the Act. Administrative remedies being exhausted, your petitioner brought suit in the United States Court for the Eastern

District of New York to compel payment. On cross motions for summary judgment the suit was dismissed without opinion. On appeal to the Circuit Court of Appeals, the lower Court was upheld by a 2-1 decision on 10 December, 1956.

Opinions Below

There was no opinion in the District Court. The majority and dissenting opinions of the Circuit Court of Appeals are set forth in Appendix A to this petition which is made a part hereof, and are reported on 239 Fed. (2nd) 562.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on December 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1251 (1).

Statutes Involved

Title 42 U. S. C. 402-416 and the Laws of Puerto Rico Ann. Title 31, par. 441. The pertinent sections of each are set forth in Appendix C and made a part of this petition.

Questions Presented

1. Does a person, born under the Civil Law Puerto Rico, and there receiving through due process of law a status "in all respects equal to legitimacy," lose those rights upon removal to the common law State of New York?

2. Is "legitimacy" a requirement under the Social Security Law for receiving benefits as the "child" of a deceased covered wage-earner?

Statement

The petitioner is an infant born in Puerto Rico and now a resident of New York. Under the law of Puerto Rico he is a "natural recognized child," as his father performed the necessary legal ceremonies to give him that status.

By the law of Puerto Rico he thus had rights of inheritance, support, use of family name "in every sense identical" to legitimate children. (*Gonzalez* v. *Hobby,* 110 Fed. Supp. 893.)

Petitioner's father moved to New York and set up residence there with the infant-petitioner as a member of his household and supported by him. Later, petitioner's father died, both petitioner and his father being then residents of New York.

The petitioner then sought Social Security benefits granted by law to the child of a deceased wage-earner. The benefits were denied on the grounds that the petitioner was not the legitimate son of the deceased wage-earner.

Petitioner believes that his status as one entitled to inheritance under the law of the place of his birth remains unaffected by his and his family's removal to New York. (*Miller* v. *Miller,* 91 N. Y. (46 Sickels) 315.) *The dissenting opinion of Chief Judge Clark upholds the contention of petitioner.*

Specification of Error to be Urged

The Circuit Court of Appeals erred:

1. In denying to the petitioner, because of his residence in New York, the rights of inheritance granted to him by the place of his birth, the Civil Law domain of Puerto Rico.

Importance of the Case

There is here presented a question not yet passed upon by this Court. One of broad application, of rapidly increasing importance, and which will continue to be brought to the Courts below until here decided.

Your petitioner is a Puerto Rican residing in New York, in the common law, continental United States. In the place of birth, Puerto Rico, the infant-petitioner had the status of "a natural recognized child," giving him a status "in every sense identical with" that of a legitimate child. (*Gonzalez* v. *Hobby,* 110 Fed. Supp. 893.)

The Court below 2-1 held that the infant-petitioner lost his rights of inheritance upon coming with his father to New York.

All members of the Court below recognized the common law rule of *Miller* v. *Miller,* 91 New York (46 Sickels) 315, that the law of the place of birth concerning a man's status travels with him.

In the Court below two held that the right of inheritance granted by the Law of Domicile was lost

unless the explicit word "legitimate" was used to describe the petitioner. The minority held that the status was the right acquired by birth and not merely the descriptive word.

There are presently, on information and belief, 734,350 Puerto Ricans in the United States (Government of Puerto Rico data as of 5 March, 1957).

The importance of having decided, by this Court, the inheritance status of a large number of those born under the Civil Law and then removing to a common law state need not be belabored. I have noted, however, in Appendix B, a copy of a letter showing the interest of Puerto Rico in this matter.

CONCLUSION

The petition should be granted and the judgment should be reversed.

Respectfully submitted,

EMANUEL REDFIELD,
60 Wall Street,
New York, New York

APPENDIX A

Opinion

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 17—October Term, 1956.
(Argued October 8, 1956 Decided December 10, 1956.)
Docket No. 23434

ROBERTO ROBLES, by his g. a. l., PABLO ROBLES,
Appellant,

—v.—

MARION B. FOLSOM, Federal Security Administrator,
Appellee.

Before:

CLARK, *Chief Judge,*
HAND and SWAN, *Circuit Judges.*

Appeal from a judgment of the District Court for the Eastern District of New York (Galston, *J.*, presiding), summarily dismissing an action brought under §405(g) of Title 42 U. S. C., to reverse a decision of the Federal Social Security Administration, which denied the infant plaintiff's application for "insurance benefits" after the death of his father.

GORDON LLOYD POTTER, *for the Appellant.*
ELLIOTT KAHANER, *for the Appellee.*

Appendix A

HAND, *Circuit Judge:*

This is an appeal from a judgment, summarily dismissing a complaint to reverse the decision of the Federal Social Security Administration, denying the plaintiff's application for "insurance benefits" after the death of his father. The question is whether the plaintiff falls within section 402(d)(3) of Title 42, U. S. C., which reads as follows: "A child shall be deemed dependent upon his father * * * unless * * * such individual was not living with or contributing to the support of such child and—(A) such child is neither the legitimate nor adopted child of such individual." Section 416(h)(1) of the act provides that: "In determining whether an applicant is the wife, husband, widow, widower, child or parent of a fully insured or currently insured individual, the Administrator shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual * * * was domiciled at the time of his death." At the time when the plaintiff's father died he was domiciled in the state of New York, and the plaintiff was living with him and was therefore "dependent" upon him within the meaning of §402 (d)(3). He had been born in Puerto Rico while his father had been domiciled there, and, although his father and mother had never been married, his father had supported him from his birth, and had taken him to the United States where he was living with the family. The Administrator's "referee" who decided the case found that in "the child's birth certificate the wage earner was named as the child's father; the wage earner was the informant who provided such infor-

mation. The wage earner recognized and accepted the child as his own from his birth"; and, as we have said, had supported him "at least from the time that" he "came to the United States in 1944." The only question therefore is whether the plaintiff was what the statute means by a "child," and that depends upon §416(h)(1): that is, whether the courts of New York would have accorded him "the same status relative to taking intestate personal property" that they would have accorded to a child: or, in other words, whether under the law of New York the plaintiff would have inherited the personal property of his father, had his father died intestate.

In *Miller* v. *Miller,* 91 N. Y. 315, the Court of Appeals of New York held that, if an illegitimate child be legitimated by the subsequent marriage of his parents in the state where they were then domiciled, his status as legitimate follows him to an after-acquired domicile, and he inherits his father's real property as though born in wedlock. However, although nothing but subsequent marriage will legitimate a child born out of wedlock in Puerto Rico,* it is true that the Puerto Rican code allows an illegitimate child to inherit his proportion of his father's property, if his father has "recognized" him as his own—§504; and, as we have said, the plaintiff was so "recognized," and would have inherited his father's personal property, had his father been domiciled in Puerto Rico when he died—§506(3). Thus the issue is narrowed to whether the plaintiff would have inherited his share of his father's personal property when his father died a resident of New York, because, although

* Civil Code of Puerto Rico §482.

not legitimate, he would have done so, if his father had been domiciled in Puerto Rico. That he would have inherited his mother's personal property in New York is true, Decedent Estate Law §83(13); but that right is confined to the mother's property.

The question whether "legitimacy" is a condition upon the inheritance of the father's personal property in New York regardless of any right of inheritance elsewhere, has come up only three times in the New York courts, so far as we can find, and always in a Surrogate's Court; and the first question is whether we should take these decisions as authoritative, or whether we should interpret the New York law independently, as we can best understand it. We think that we are to take the decisions as authoritative, and not as the Supreme Court regarded a decision of the Court of Common Pleas of South Carolina in *King* v. *Order of United Commercial Travelers,* 333 U. S. 153. Although we can find no decision precisely in point, it appears to us that the differences in substance between the Surrogate's Court and the old Court of Chancery in New Jersey are not enough to make inapplicable the decision of the Supreme Court in *Fidelity Union Trust Co.* v. *Field,* 311 U. S. 169. Besides, in the case at bar there are three similar, but independent, interpretations of the same issue, without any intimation of dissidence in the opinions of the higher courts.

The three decisions we refer to are *In Re Vincent,* 189 Misc. 489 (Kings County, 1947); *In Re Tomacelli-Filomarino,* 189 Misc. 410 (New York County, 1947); and *In Re Slater,* 195 Misc. 713 (New York County, 1949). In the first, Surrogate McGarey had before him the question whether an illegitimate child, born

in Haiti, inherited by descent from her father who was domiciled in New York at the time of his death, though he remained a citizen of Haiti. The court held—p. 493—that if the law of Haiti "merely enables a natural child, when recognized by its parents or parent, to inherit as a recognized natural child as distinguished from one which legitimates such child, it is one merely of descent which governs solely the inheritance of property located in that State." New York courts "will not recognize a law or statute of a * * * State which merely permits an illegitimate child to inherit as an illegitimate in the estate of its father." In the second case Surrogate Collins held that the illegitimate child of a Mexican, domiciled in that republic, did not inherit property in New York because her parents had never married, the only method of legitimation known to the Mexican law. Both her parents had indeed "recognized" her and the Mexican law gave her certain rights of support and inheritance, but this did not give her any "interest whatever in the estate administered here."

In the third decision the father of an illegitimate child, born in Louisiana and there domiciled when the child was born, had died after acquiring a domicile in New York. The law of Louisiana provided for the legitimation of a child by subsequent marriage (Art. 199 of the Civil Code), or by a declaration by both parents of intention "to legitimate such child," (Art. 200), though the declaration must be "by an act passed before a notary and two witnesses." Illegitimates might also be "acknowledged by their father" and then "are called natural children" (Art. 202), and this "acknowledgement of an illegitimate child shall be made by a declaration executed before a notary

public in the presence of two witnesses" (Art. 203). Surrogate Frankenthaler decided that "the Louisiana courts have held in a long series of decisions that this statutory device"—a "declaration * * * before a notary"—"is not the exclusive method of acknowledgment and that a child * * * may prove that his parents recognized his legitimate status by other competent evidence." He then described the evidence that satisfied him that upon "the law and the facts" the child was "legitimate under Louisiana law." Throughout he assumed that *In Re Vincent, supra,* was correctly decided because in the case at bar "the Louisiana law, unlike that of Haiti * * * provides for legitimation" (underscored) "by acts other than subsequent intermarriage." We accept the Surrogate's understanding of the Louisiana decisions, though we have not considered them because the issue is irrelevant here. The only important factor is that he proceeded upon the premise that it was necessary to decide, not that the child was entitled to inherit in Louisiana, but that she had been "legitimated" by what her father had done while he was domiciled there. The plaintiff's difficulty is that there is no evidence, as we have said, either in the Code or the decisions that anything other than subsequent marriage of parents will legitimate a child in Puerto Rico, as distinct from giving him rights of inheritance.

As for *Gonzales* v. *Hobby,* 110 F. Supp. 893, it is enough to distinguish it from the case at bar that the judge held that the plaintiffs' right to the insurance of their father was not to be determined by "the substantive law of the District of Columbia," but by "the substantive law of the place where he" [the father] "resided or was domiciled." The father was

domiciled in Puerto Rico when he died, by the law of which, as has appeared, a child may inherit regardless of his "legitimacy"; and it would indeed have been a very harsh ruling to say that the plaintiffs in that case should not be awarded the insurance granted by the statute, although they were entitled to all the rest of their father's personal property. On the other hand, if the plaintiff at bar were successful here, the insurance money is the only personal property that devolved upon him from his father. Whatever we may feel about the persistence of the cruel archaism of illegitimacy, it appears to us that Congress plainly meant these rights to descend as if they were parts of the personal property of the insured, and that we should have no warrant for interpolating an exception, however much we might welcome the result.

Order affirmed.

CLARK, *Chief Judge* (dissenting):

As Judge Hand's opinion points out, this child from birth was accepted by the father as his own and a part of his family; and while the parents were eligible to marry, they just did not bother to do so. No bar to either inheritance or receipt of social security benefits could have arisen had father and son remained in Puerto Rico; but removal to New York now results in denying these benefits to the recognized child. This very harsh result comes, in my opinion, from forcing Anglo-Saxon moral patterns on a family having its origin in the more tolerant atmosphere of Puerto

Rico and the civil law it follows.[1] And this, in turn, comes about from an emphasis on names or labels, rather than on substance, in translating civil law concepts into New York equivalents.

Whereas New York classes all children born out of wedlock as "illegitimates," legal systems influenced by the Code Napoleon distinguish "natural children" from others—a natural child being one whose parents were not legally barred from marrying each other at the time of the child's birth or conception.[2] By informal voluntary acts a parent can raise a natural child to the status of "recognized (or acknowledged) natural child," thus giving it rights of inheritance and certain social benefits. Or, by formal acts prescribed in the local civil code, the parent can "legitimate" the child, elevating it above recognized natural children to the level of those born in wedlock. In these civil law countries there are three categories of children—"legitimates," "acknowledged natural children," and others, i. e., bastards; and there are two different processes for changing status—"legitimation" and "acknowledgment."[3]

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[1] "The comon law of England, which is also the American common law, is more unfavorable to the illegitimate child than the civil law of Rome, on which the continental legal systems are based, namely in two respects: It does not recognize a legal relationship even between the mother and the child and it does not allow legitimation by subsequent marriage." Freund, Illegitimacy Laws of the United States and Certain Foreign Countries 9 (1919).

[2] Robbins & Deák, *The Familial Property Rights of Illegitimate Children: A Comparative Study*, 30 Col. L. Rev. 308, 321-325 (1930); Note, 15 La. L. Rev. 221 (1954).

[3] "The relation less than legitimation, that of recognized natural child, may arise by the law of several European states, between a

I cannot agree that the New York law prevents an acknowledged natural child from taking personal property if his father dies intestate while domiciled in New York. It is clear that the status of the child would be determined by the law of the place where he was born. *Miller* v. *Miller,* 91 N. Y. 315. In that case a child born out of wedlock in Wurttemberg attempted to take real property in New York by intestacy upon the death of his father. His parents had subsequently married each other, and the law of Wurttemberg entitled him to inherit real property there. Under the then law of New York, however, subsequent marriage did not "legitimate" children born out of wedlock and they could not inherit. The Court of Appeals applied the Wurttemberg law of inheritance and found for the child.[4]

In the most recent New York case discussed by my brethren a child born out of wedlock in Louisiana whose parents never married was considered eligible to inherit in New York. *In re Slater's Estate,* 195 Misc. 713, 90 N. Y. S. 2d 546. Louisiana's Civil Code derived from the Code Napoleon and had the concept

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parent and a natural child." 2 Beale, A Treatise on the Conflict of Laws §140.2 (1935).

For a translation of the civil codes of France and Switzerland dealing with this subject see Freund, *op. cit. supra* note 1, at 245-248, 254-256. For a translation of the modern Spanish law on the subject see Fisher, The Civil Code of Spain 56-70 (5th Ed. 1947). See also Laws of Puerto Rico Ann., tit. 31, §§452-507 (1954), and the Translation of the Civil Code in Force in Cuba, Porto Rico, and the Philippines, published by the Government Printing Office in 1899, at 22-27.

[4] The quotation from the Wurttemberg statute in the Court of Appeals opinion clearly indicates that the statute governs the inheritance of real property in Wurttemberg. 91 N. Y. 315, 317.

of acknowledged natural child. Under the Louisiana cases, which were cited in the New York opinion, the father's informal acts of attending his daughter's christening and later referring to her as his own were sufficient to confer this status on the child, despite the literal wording of Art. 203 of the Louisiana Civil Code. *Lange* v. *Richoux,* 6 La. 560; *Succession of Vance,* 110 La. 760, 34 So. 767; *Succession of Serres,* 136 La. 531, 67 So. 356; *Taylor* v. *Allen,* 151 La. 82, 91 So. 635; *Succession of Hébert,* 33 La. Ann. 1099. Under other Louisiana cases, which were also cited in the New York opinion, such informal acts of the father were insufficient to "legitimate" the child and elevate it to full legal equality with children born in wedlock. *Hart* v. *Hoss,* 26 La. Ann. 90; *Perkins* v. *Brownell-Drews Lumber Co.,* 147 La. 337, 84 So. 894; *Duvigneaud* v. *Loquet,* 131 La. 568, 59 So. 992; *Stewart* v. *Parish of Jefferson Davis,* 17 La. App. 626, 136 So. 659.

These cases held that both acknowledged and legitimated children had rights of intestate succession, and the distinction between the two groups was significant only if the child's claim was contested by an heir with rights superior to an acknowledged child, but not superior to a legitimated one. The New York Surrogate in *In re Slater's Estate, supra,* 195 Misc. 713, 90 N. Y. S. 2d 546, properly did not distinguish between acknowledged and legitimated children, but rather classed both types together and contrasted them with children born out of wedlock and never elevated —a group which has no rights of inheritance or social position. Where he spoke of acknowledged children

as "legitimate" or "legitimated," he used these words in their New York, and not their Louisiana, sense.[5]

From the cases he cited it is clear the Surrogate understood that Louisiana courts would have called the Slater child "acknowledged," and not "legitimated." All commentators who have discussed the Louisiana cases have noticed that such informal acts create the first status, rather than the second.[6] My brethren say these cases are irrelevant, and they prefer to interpret the Surrogate's opinion in the light of four Louisiana statutes. But the cases which the Surrogate selected to support his decision seem a far better indication of his meaning than the naked text of these statutes—two of which he did not cite, and all of which are discussed in these cases.

Thus the result reached by the Surrogate appears to be good sense, as well as good law. Since civil law jurisdictions have three categories of children and New York has only two, the "acknowledged natural child" must be likened to either New York "legitimates" or New York "bastards." The chief similarity to the New York bastard, for purposes of intestate succession, is a mere semantic identity—neither is labeled "legitimate." On the other hand, the acknowledged child is one whom the father claimed as his own

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[5] See note 10 *infra*, where a commentator similarly used the word "legitimated" in its Anglo-Saxon sense to cover children "acknowledged" through Louisiana procedures.

[6] E.g., Professor Leonard Oppenheimer's comprehensive article, *Acknowledgment and Legitimation in Louisiana—Louisiana Act 50 of 1944*, 19 Tulane L. Rev. 325 (1945), and the works cited by him; Freund, *op. cit. supra* note 1, at 24; Stevenson, Analysis and Tabular Summary of State Laws Relating to Illegitimacy in the United States 16-19 (1929); U. S. Dept. of Labor, Children's Bureau, Chart No. 16, "Paternity Laws," 2 (1938); Note, 15 La. L. Rev. 221 (1954).

with knowledge that the act would confer on it rights of inheritance and greater social status.

My brethren rely on an earlier opinion of another Surrogate which takes their position; but it is unpersuasive authority, since it marches from a premise previously rejected by the New York Court of Appeals. *In re Vincent's Estate,* 189 Misc. 489, 71 N. Y. S. 2d 165. There a Surrogate refused to consult the foreign law of *inheritance* in determining whether acknowledged children were to be analogized to New York "legitimates"; instead he looked to the foreign law of *legitimacy.* 189 Misc. 489, 71 N. Y. S. 2d 165, 169. In this initial step he became involved in semantics which led necessarily to the conclusion that persons whom foreigners call "legitimate" are the only ones New Yorkers can treat as "legitimate" for purposes of inheritance. As pointed out above, the Court of Appeals proceeded more logically in the *Miller* case, 91 N. Y. 315, and looked to the foreign law of *inheritance* in such circumstances. Whether the author of the *Slater* opinion, 195 Misc. 713, 90 N. Y. S. 2d 546, was convincing or not in his effort to distinguish the *Vincent* case, 189 Misc. 489, 71 N. Y. S. 2d 165, he certainly had it before him and rejected its result.[7]

Faced as we are with a conflict of New York cases we should follow the most recent state decision, especially since the contrary authority contradicts a lengthy, well-reasoned, unanimous opinion of the

[7] The other case cited by my brethren, *In re Tomacelli-Filomarino,* 189 Misc. 410, 73 N. Y. S. 2d 297, does not contain a sufficient statement of the Mexican law to indicate whether or not the child involved was in the same position as the plaintiff; in any event the decision relies wholly on the *Vincent* case, 189 Misc. 489, 71 N. Y. S. 2d 165, and adds nothing to it.

highest state court. The growing tendency of the New York courts to look with more sympathy on the claims of illegitimates leads to the same result. See *In re Anonymous' Estate,* 204 Misc. 1045, 126 N. Y. S. 2d 749. Considerations of policy and humanity point the same way. In such circumstances we should not be more harsh than the courts of the state whose law we are charged to apply. See *Bloch* v. *Ewing,* D. C. S. D. Cal., 105 F. Supp. 25.

Since, as I believe, acknowledged natural children may take by inheritance in New York, the plaintiff should prevail. The Puerto Rican Civil Code, which derives from the Louisiana and Spanish Civil Codes,[8] has the same three categories of legitimates, recognized natural children, and others.[9] Like the Louisiana law cited in the *Slater* case, 195 Misc. 713, 90 N. Y. S. 2d 546, Puerto Rican law distinguishes between natural children who have been "recognized" and those who have been "legitimated." The former have limited rights of inheritance and social status; the latter are raised to full equality with children born in wedlock.[10] It is true that the Puerto Rican procedures

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[8] See the historical notes to Laws of Puerto Rico Ann., tit. 31, §§442-507, especially §442 (1954).

[9] Sec. 442 is the same as §§178-180 of the La. Civil Code of 1870, and defines legitimate and illegitimate children. Secs. 461-466 further define legitimate children and state their rights. Secs. 481-486 govern the process of "legitimation." Secs. 501-506 define natural children, prescribe the modes for recognizing them, and state the rights of recognized natural children. Secs. 507-514 govern the right of other children to support.

[10] See U. S. Dept. of Labor, *op. cit. supra* note 6, at 2: "The law of Louisiana differs from that of other States in being based on the Napoleonic Code. Only the child of persons who might legally have married at the time of the child's conception, may be legitimated on marriage of his parents. Such children, called

for raising natural children to full legitimacy are somewhat different from the procedures in Louisiana;[11] but the difference cannot distinguish the *Slater* case from this one, since in both cases the child was only "acknowledged" under local law, and in neither case did the parents utilize the local procedure for elevating their child to full equality with children born in wedlock.

I think we should reverse and direct judgment for the plaintiff.

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natural children, are the only children born out of wedlock whose interests are protected by the Louisiana law. In addition to legitimation on formal acknowledgment of paternity and marriage of the parents, such a child may be 'legitimated' for purposes of inheritance by either the natural mother or father on declaration of intentions before a notary public or two witnesses. The law of Puerto Rico is similar in origin and similarly defines a natural child."

[11] In Puerto Rico at the time when the plaintiff was born, full legal equality for children born out of wedlock was possible only if the parents subsequently married. Laws of Puerto Rico Ann., tit. 31, §482 (1954). In Louisiana at the time of the Slater child's birth such equality was conferred only if there were formal acts, either before a notary or in the marriage contract. E.g., *Perkins* v. *Brownell-Drews Lumber Co.*, 147 La. 337, 84 So. 894; *Duvigneaud* v. *Loquet*, 131 La. 568, 59 So. 992; *Succession of Serres*, 136 La. 531, 67 So. 356. In both jurisdictions later legislation has made it much easier for children born out of wedlock to attain full equality. See Oppenheimer, *Acknowledgment and Legitimation in Louisiana—Louisiana Act 50 of 1944*, 19 Tulane L. Rev. 325 (1945); Laws of Puerto Rico Ann., tit. 31, §441 (1954), passed in 1952.

APPENDIX B

COPY

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF LABOR

88 Columbus Avenue, New York 23, N. Y.
Telephone, Susquehanna 7-2900

March 1st, 1957

Mr. Gordon L. Potter
Counsellor-at-Law
58 Park Avenue
New York 16, New York

Dear Mr. Potter:

In the matter of Roberto Robles and the Federal Security Administrator, I wish to inform you that this office is extremely interested in this case and has petitioned the Department of Justice of the Commonwealth of Puerto Rico to consider filing an *amicus curiae* in the proceeding to be brought before the Supreme Court of the United States.

I would appreciate it if you kept me informed on this matter.

Sincerely yours,

/s/ JOSEPH MONSERRAT
Director
New York Office

JM:jc

APPENDIX C

Statutes Involved

Laws of Puerto Rico Ann., Title 31, sec. 2431. Rights of Acknowledged Natural Children When There Are Legitimate Children.

When the Testator leaves legitimate children or descendants, and natural children legally acknowledged, each of the latter shall have a right to a portion equal to that pertaining to each of the legitimate children who have not received any advantage or extra portion.

Title 31, sec. 506. "Rights of recognized natural child".

A recognized natural child has the right:

1. To use the surname of the parent making recognition,

2. To be supported by the same,

3. To receive the hereditary portion determined in this title.

Title 42 U. S. C. 402-416. 42 U. S. C. Sec. 402(d), so far as pertinent here, reads as follows:

"(d) (1) Every child (as defined in section 216(e)) of an individual . . . who died a fully or currently insured individual after 1939, if such child—

"(A) has filed application for child's insurance benefits,

"(B) at the time such application was filed was unmarried and had not attained the age of eighteen, and

"(C) was dependent upon such individual at the time such application was filed, or, if such individual has died, was dependent upon such individual at the time of such individual's death,

shall be entitled to a child's insurance benefit. . . ."

Section 416(e), so far as pertinent here, reads as follows:

"e) The term 'child' means (1) the child of an individual, and . . . (3) in the case of a deceased individual, (a) an adopted child, or (b) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which such individual died. In determining whether an adopted child has met the length of time requirement in clause (2), time spent in the relationship of stepchild shall be counted as time spent in the relationship of adopted child."

42 U. S. C., Sec. 402:

(3) A child shall be deemed dependent upon his father or adopting father at the time specified in paragraph (1)(c) of this subsection unless at such time, such individual was not living with or contributing to the support of such child *and*—

(A) such child is neither the legitimate nor adopted child of such individual. . . .

Appendix C

Section 416(h)(1) reads, so far as pertinent, as follows:

> "In determining whether the applicant is the wife, husband, widow, widower, child or parent of an . . . insured individual, the Administrator shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual . . . was domiciled at the time of death. . . . Applicants who according to such law would have the same status relative to taking intestate property as a . . . child, . . . shall be deemed such."

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 621 MISC.

ROBERTO ROBLES, by his g.a.l., PABLO ROBLES, PETITIONER

v.

MARION B. FOLSOM, FEDERAL SECURITY ADMINISTRATOR

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. 7-20) is reported at 239 F. 2d 562.

JURISDICTION

The judgment of the Court of Appeals was entered on December 10, 1956 (Pet. App. 7). The petition for a writ of certiorari was filed on March 11, 1957. The jurisdiction of this Court is presumably invoked under 28 U.S.C. 1254(1).[1]

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[1] Petitioner, at page 2 of the petition, invokes the jurisdiction of this Court under 28 U.S.C. 1251(1)—the "Original Jurisdiction" section. We assume that this was an inadvertent error.

QUESTION PRESENTED

Petitioner seeks insurance benefits as the "child" of a deceased wage earner covered by the Social Security Act. The Act provides that the status of a "child" shall be determined according to the laws governing the devolution of intestate personal property in the state of the wage earner's domicile at his death. The wage earner, at his death, was domiciled in New York.

The question presented is whether the Court of Appeals for the Second Circuit properly concluded, upon the basis of the controlling New York law, that petitioner would not have been able to share as a child in the devolution of his father's intestate personal property.

STATUTES INVOLVED

The Social Security Act, 49 Stat. 620, as amended, 64 Stat. 492, 42 U.S.C. 401 *et seq.*, provides in pertinent part:

> Section 202. * * *
> (d) * * *
> (1) Every child * * * of an individual who died a fully or currently insured individual after 1939, * * *
>
> * * * * *
>
> shall be entitled to a child's insurance benefit * * *
> Section 216. * * *
> (h) * * *
> (1) In determining whether an applicant is the * * * child, * * * of a fully insured or currently insured individual for purposes of this title, the Administrator shall apply such law as would be applied in determining the devolution of intestate personal property * * * by the courts of the State

> in which he was domiciled at the time of his death, * * *. Applicants who according to such law would have the same status relative to taking intestate personal property as a * * *, child, * * * shall be deemed such.

Title 31 of the Laws of Puerto Rico Ann., provides in pertinent part:

> Sec. 482
> The legitimation of children had out of wedlock shall be accomplished by the subsequent reciprocal marriage of the parents; * * *
> Sec. 506
> A recognized natural child has the right:
> * * *
> 3. To receive the hereditary portion determined in this title.

STATEMENT

By suit brought in the District Court, petitioner sought reversal of the final decision of the Federal Social Security Administration denying his application for insurance benefits as the alleged child of a deceased wage earner. The undisputed facts may be summarized as follows:

The deceased wage earner, Jose Robles, died domiciled in New York on October 17, 1950 (R. 4).[2] He was the natural father of the infant petitioner, Roberto Robles, who was born out of wedlock on December 8, 1943, in Puerto Rico, where the wage earner was then domiciled (R. 4, 13). In the child's birth certificate the wage earner was named as the child's father, such

[2] Record references are to the record from the Court of Appeals, which is on file with this Court.

information having been provided by the wage earner (R. 13). The wage earner recognized and accepted the child as his own from birth. From at least the time that the wage earner came to the United States in 1944, the child lived with the wage earner and his family, and the wage earner supported the child (R. 13).

Following the wage earner's death, the grandfather of the infant petitioner filed an application for "child's insurance benefits" on behalf of Roberto Robles (R. 4a). On January 11, 1952, the Social Security Administration's Bureau of Old-Age and Survivors Insurance disallowed the claim on the ground that the claimant had not met the relationship requirement of the Act as a "child" of the wage earner. A referee in the Social Security Administration's Office of Appeals Council, after a hearing, sustained the Bureau's decision, and on October 15, 1952, the Appeals Council affirmed the referee's determination. (R. 4a). The Appeals Council's decision thus became the "final decision of the Administrator" within the meaning of Section 205(g) of the Act, 42 U.S.C. 405(g).

Petitioner then brought suit against the Administrator in the District Court, claiming entitlement to the insurance benefits and seeking a reversal of the Administrator's decision (R. 4, 4a). Petitioner and respondent moved for summary judgment (R. 7, 8). Judge Galston granted respondent's motion for summary judgment, denied that of petitioner, and dismissed the complaint (R. 9-10).

Petitioner appealed (R. 11), and the Court of Appeals affirmed, Judge Clark dissenting (R. 26). After a careful and detailed analysis of the controlling New York decisions, the majority (Judges Hand and Swan)

concluded that petitioner would not be entitled to share in the intestate personal property of his father in New York, and was therefore precluded from claiming a "child's" status, and taking any benefits as such under the Social Security Act (Pet. App. 8-13).

ARGUMENT

The sole question raised by this petition is whether the Court of Appeals for the Second Circuit properly concluded that, under New York law, petitioner would not have been able to share as a child in the devolution of his father's intestate personal property. Since it is apparent that neither federal nor constitutional questions are involved, and since the controlling New York authorities fully support the decision of the court below, further review by this Court is unnecessary.[3]

By the terms of Section 202(d) of the Social Security Act, as amended (*supra*, p. 2), petitioner's eligibility for "child's insurance benefit" is, among other factors, dependent upon his having the status of "child" of the deceased wage earner. Section 216 (h)(1) of the Act (*supra*, p. 2) expressly provides that in making the determination as to whether the claimant is a "child" of the deceased wage earner, the Administrator "shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual * * * was domiciled at the time of his death." Petitioner's father was domiciled at his death in the State of New York, and therefore it is the applicable law of that state

[3] Indeed, this Court has specifically stated that it will leave undisturbed a Court of Appeals' interpretation of local law if that interpretation does not appear unreasonable. *Helvering* v. *Stuart*, 317 U.S. 154, 164; see also *Estate of Spiegel* v. *Commissioner*, 335 U.S. 701, 707-708; *Propper* v. *Clark*, 337 U.S. 472, 486-487.

which determines whether petitioner was a "child" within the meaning of the Act, *i.e.*, whether under the law of New York petitioner would have inherited the intestate personal property of his father.

Although New York, by statute, has expressly provided that an illegitimate child can inherit the personal property of his *mother* (Section 83(13) of the New York Decedent Estate Law), the New York legislature has not extended to the illegitimate child, even if acknowledged by the father, a similar right of inheritance with respect to the father's property.[4] The New York Court of Appeals has held, however, that if an illegitimate child becomes legitimated by the subsequent marriage of his parents according to the laws of the state or country where the marriage takes place and the parents are then domiciled, such legitimacy will follow the child wherever he may go, and he would thus be entitled in New York to all the rights flowing from that status. *Miller* v. *Miller*, 91 N.Y. 315. Therefore, there would be no question that had petitioner become legitimated through the subsequent marriage of his parents (the only method of legitimation in Puerto Rico, Laws of Puerto Rico Ann., Tit. 31, §482, *supra*, p. 3) that status would have enabled him to inherit his father's property in New York. Nor is there any ques-

[4] On the other hand, New York has seen fit to extend Workmen's Compensation benefits to acknowledged illegitimate children who were dependent upon the deceased worker. New York Workmen's Compensation Law, §2 (11). It is pertinent to note, also, in view of Judge Clark's belief that "acknowledged natural children may take by inheritance in New York" (Pet. App. 19), that a New York court has specifically stated that although acknowledged illegitimate children are entitled to benefits under Workmen's Compensation Law they are not, under the Decedent Estate Law, entitled to share in their father's estate. *Battalico* v. *Knickerbocker Fireproofing Co.*, 294 N.Y.Supp. 481, 486-487.

tion that petitioner, as an acknowledged illegitimate child, would have been entitled to inherit his father's personal property, had his father been domiciled in Puerto Rico when he died. Laws of Puerto Rico Ann., Tit. 31, §506, *supra*, p. 3. But the Surrogate's Court of New York, which in that state is the court empowered to determine the devolution of intestate personal property (Surrogate's Court Act of New York, § 40), has held, on the three occasions in which the issue has arisen, that regardless of any right of inheritance elsewhere, the child must be of legitimate status in order to inherit his father's personal property in New York. *In re Vincent's Estate,* 71 N.Y.S. 2d 165; *In re Tomacelli-Filomarino's Estate,* 73 N.Y.S. 2d 297; *In re Slater's Estate,* 90 N.Y.S. 2d 546. It was these controlling decisions to which the court below properly turned in arriving at its decision that petitioner did not meet the relationship requirements of the Act.

In re Vincent's Estate, supra, is indistinguishable with respect to the issue that is here involved, except that the child there was born in Haiti, rather than Puerto Rico. Rejecting the claimant's contention that her inheritance rights as a recognized child under the laws of Haiti enabled her to inherit as a legitimate child in New York, the Surrogate said (71 N.Y.S. 2d at 169):

> If the law of the Republic of Haiti, the application of which is envoked by the claimant, is one which merely enables a natural child, when recognized by its parents or parent, to inherit as a recognized natural child as distinguished from one which legitimates such child, it is one merely of descent which governs solely [the] inheritance of property located in that state, and as such can have

> no extraterritorial operation so as to control the course which realty located in this State must take or the devolution of personal property of a decedent actually domiciled in this State at the time of his death. Consequently, the courts of this State will not recognize a law or statute of a foreign country or state which merely permits an illegitimate child to inherit as an illegitimate in the estate of its father, as distinguished from one which legitimates the illegitimate child.

Similarly, the Surrogates in *Tomacelli, supra,* and *Slater, supra,* in determining whether the claimants were entitled to inherit in New York, looked to the place of their birth, not to establish rights of inheritance at their birthplace, but to determine whether acts of legitimation had there occurred. In his dissent, Judge Clark states that *Tomacelli* "does not contain a sufficient statement of the Mexican law to indicate whether or not the child involved was in the same position as the plaintiff; [and] in any event the decision relies wholly on the *Vincent* case * * *, and adds nothing to it." (Pet. App. 18, fn. 7). As the majority observed, however, the case clearly shows that the child had been "recognized" by her father and was entitled, by virtue of that recognition, to certain rights of inheritance in Mexico; however, because the child's parents had never married (the only method of legitimation known to the Mexican law), the Surrogate held that the child was not entitled to an interest in the estate administered in New York. Whether or not this decision "adds" anything to the *Vincent* case is beside the point; the pertinent fact is that it represents a similar interpretation by another New York Surrogate of the precise issue that is here

involved. And the Surrogate in *Slater, supra,* finding that the claimant *had* become legitimated according to the Louisiana law there involved, properly concluded that the child was entitled to inherit in New York. All three Surrogates, therefore, followed the same exact path in arriving at their respective decisions, *i.e.,* first, to determine whether acts of legitimation had taken place according to the law of the child's birthplace, and, if so, to allow the child to inherit in New York.

In view of the undisputed fact that nothing other than subsequent marriage of parents will legitimate a child in Puerto Rico, and since petitioner's parents had never married, the Court of Appeals properly concluded, upon the basis of the applicable New York Law, that petitioner was not entitled to inherit the intestate personal property of his father, and was therefore not entitled to insurance benefits under the Act. Since Congress clearly intended that the right to insurance benefits should be determined upon the basis of the claimant's status in the state in which the wage earner was domiciled at the time of his death, the court below had no other recourse. As Judge Hand observed (Pet. App. 13):

> Whatever we may feel about the persistence of the cruel archaism of illegitimacy [in New York], it appears to us that Congress plainly meant these rights to descend as if they were parts of the personal property of the insured, and that we should have no warrant for interpolating an exception, however much we might welcome the result.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL, 1957.

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